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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.113 OF 2004

Aatmaram Savala Girme ... Appellant

V/s.

The State of Maharashtra ... Respondent

Mrs.Smita Gaidhani for Appellant
Mr.P.S. Hingorani, APP, for Respondent

CORAM: **V.G. PALSHIKAR &**
SMT.NISHITA MHATRE, JJ.

DATED: **NOVEMBER 24, 2006**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. This Appeal impugns the judgment of the I Adhoc Additional Sessions Judge, Satara dated 13.5.2003 passed in Sessions Case No.112 of 2002. The accused has been convicted and sentenced under section 302 of the Indian Penal Code.

2. The case of the prosecution is that the accused was enraged when the victim, his wife, alleged that he had stolen Rs.8,000/- from her father. The accused was then under the influence of liquor and had threatened to kill his wife and his sons. The accused and his wife retired for the night and slept in the kitchen whereas their two sons slept outside. The two sons had attended some festivities in the village despite their father’s

disapproval. When they returned at about 2 am on 24.5.2002, their father admonished them and prevented them from switching on the electric bulb. When the two boys woke up the next morning at 7, they found that the house was unlocked and their mother was not responding to their touch. Since they could not find their father these boys immediately went to their neighbour's place and informed her of their mother not awakening. The neighbour found the victim was dead while the accused was nowhere in sight. A complaint was lodged against the accused by the brother of the victim who was informed about her death. The accused was arrested on the same day and was tried for having murdered his wife by strangulating her.

3. At the trial, the prosecution examined nine witnesses including one of the sons of the accused. The prosecution has relied essentially on circumstantial evidence to prove the case against the accused. The principal circumstances on which the prosecution has stressed on are: (i) that there was a quarrel between the accused and the victim when she alleged that the accused had stolen Rs.8000/- from her father; (ii) that the accused had prevented his sons from switching on the electric bulb when they returned from the village festivities at 2 am on 23.5.2002; (iii) that the

children had not found their father anywhere around when they awoke at 7 am on 23.5.2002; (iv) a rope was discovered at the spot of the incident; (v) that the accused was seen boarding a bus at the S.T. stand at about 6.30 am on 23.5.2002; (vi) the victim was last seen together with the accused by their sons on the previous night when they retired to bed; (vii) ligature marks were seen on the neck of the deceased.

4. The victim's son who has been examined as PW5 has spoken about the quarrel between his parents on the previous night. In fact, this part of his evidence has not been shaken by the cross-examination. Therefore, it can be accepted that the accused and the victim had quarrelled the previous night.

5. The second circumstance which the prosecution relies on is that the sons had last seen the parents together when they retired for the night. This has been proved by the prosecution through PW5.

6. The next circumstance which the prosecution relies on is that the children had left the house for 10 O'clock at night to witness some village festivities and had returned home at 2 O'clock the next morning. PW5 has spoken about this fact. He has then stated that he

intended to switch on the light when the accused prevented him from doing so and he therefore, went to sleep, immediately. However, this evidence and conduct of PW5 is not believable. He had earlier stated that the accused had disapproved of him and his brother attending the village festival. He had left the house with his brother without permission from his parents and without their knowledge. It is, therefore, unbelievable that the children would return home and try to switch on the light at 2 am knowing full well that it would awaken their parents and they would incur the wrath of their father. Assuming that what PW5 has stated about the accused having prevented him from switching on the light is true, it still does not prove as the prosecution wants us to believe, that it is the accused who has committed the crime.

7. The next circumstance is that the children had awoken at 7 am and found that the house was unlocked and that their father was nowhere to be seen. Their mother did not respond to their call or their touch. PW5 has stated that when he found that his mother was not responding, he informed his neighbour who has been examined as PW6. This witness states that when she went into the house of the accused on being informed by PW5 of his mother’s inertness, she found that the victim had

died. She has spoken of a rope lying near the foot of the deceased and that the accused was nowhere to be seen. The absence of the accused as spoken about by PW5 and PW6 is sought to be linked by the prosecution to the fact that he was seen boarding a bus at 6.30 in the morning. PW2 and his brother PW4 have stated that they saw the accused boarding the ST bus. They had accompanied their aunt to the ST stand since she was returning to her village. PW4 states that he boarded the bus with his aunt to drop her off at her village and returned at about 11.30 am. However, significantly, PW2 has not spoken about PW4 having accompanied his aunt to her village. Neither PW2 nor PW4 have stated that they found anything amiss when they saw the accused entering the bus at 6.30 in the morning.

8. The witnesses examined for the prosecution have spoken about a rope being found near the foot of the victim. All the witnesses who saw the corpse have stated that they saw ligature marks on the neck of the deceased. Whether the rope found lying at the spot was used to strangulate the deceased is not established from the evidence on record. There was no rope found around the neck of the deceased. The witnesses have stated that the victim was lying in a supine condition and blood which had oozed out from her ear had dried.

Although the rope was seized there is no evidence to connect it to the accused. PW1, the victim's brother, reached the house of the accused when informed by one of the villagers that there was some problem at his sister's place. He reached at about 9 am, heard his nephews out and then went to the police station to record his complaint. A supplementary statement was recorded by the police on 26.5.2002 after the arrest of the accused. Photographs of the corpse have been taken by the investigation agencies. PW1 has deposed that the body of the victim was lying in the same position as seen in the photographs when he saw the body. PW2 has also described the position of the body when he saw it. However, he has stated that the position of the body and the condition in which it was when he saw it was not reflected from the photographs placed on record. This witness saw the body even before PW1. Despite this, he has deposed that the position of the clothing on the body was not the same as is seen from the photographs. Similarly, PW4, who saw the body after he returned at 11.30am has stated that the photographs match the condition of the body as it was when he saw it. The neighbour who has been examined as PW6 and who was the first person to see the body after being alerted by the children has stated that the photographs do not match the state in which she had seen the body. From these

depositions, it is obvious therefore, that the clothing on the body had been shifted probably in order to take some photographs. These photographs were taken only after the investigation commenced i.e., around 11 am. However, PW1 who saw the body at 9 am claims that the condition of the body as he had seen it and the position of the clothing on it matches the state in which the body was found when the photographs were shot. Admittedly, the photographs were taken after the inquest panchanama as seen from the deposition of PW9, the Investigating Officer. The deposition of PW1 regarding the time he saw the body seems unbelievable.

9. The medical evidence has been brought on record through PW7. He is the medical officer who has performed the postmortem examination on the dead body. He speaks of the victim having been strangulated and the death occurring due to asphyxia. He has opined that the rope which was seized could have caused the injuries found around the neck of the deceased. However, in the cross-examination this Doctor demonstrates his lack of knowledge of medical science. He is not able to say definitively as to how many hours it would take to digest food like rice and meat. He is unble to mention the time taken for digestion of food in the small intestine and the large intestine. These basic premises

are surprisingly not within the knowledge of this Doctor. He then states that he does not agree with the observations made by Dr.Modi in his book on Medical Jurisprudence in respect of strangulation and hanging. At the same time, he states that the decomposition of the body would start only 2 to 3 days after the death of a human being. The evidence of the Doctor is completely unbelievable. He has displayed a marked callousness and negligence while conducting the postmortem examination which could either be due to his lack of knowledge or sheer indifference.

10. The deposition of the Investigating Officer PW9 indicates that he did not seize the quilt which was on the body of the victim. He has also not cared to send the rope for chemical analysis. The results of such a test could have revealed whether the same rope which was found near the dead body was used to strangulate the victim.

11. Considering the evidence on record, we find that we are unable to accept the case of the prosecution that it is the accused alone who has committed the crime. While deciding whether the chain of circumstances is complete, certain conditions must be fulfilled and established against the accused, as held by the Apex

Court in the case of *Sharad Birdhichand Sarda v/s. State of Maharashtra*, **1984 SCC (Cri.) 487** thus:

> 153. ... The following conditions must be fulfilled before a case against an accused can be said to be fully established on circumstantial evidence:
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> (1) the circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be' fully established,
>
> (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
>
> (3) the circumstances should be of a conclusive nature and tendency,
>
> (4) they should exclude every possible hypothesis except the one to be proved, and
>
> (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. ...."

While making these observations, the Supreme Court has also relied on one of its previous decisions in the case of *Shankarlal Gyarasilal Dixit v/s. State of Maharashtra* **(1981) 2 SCC 35.**

12. From the evidence on record, we find that two hypotheses are possible - one pointing towards the accused having committed the offence and the other that

the prosecution's case suffers from serious infirmities. In our opinion, the chain of circumstantial evidence is not complete because there are various lacunae in the prosecution's theory as we have considered above. The time of death of the victim cannot be ascertained. Whether she was killed during the night between 22.5.2002 and 23.5.2002 or she was killed after the accused had left the house has not been established. The postmortem was conducted at about 4 pm on 24.5.2002. By this time, rigormortis was well marked all over the body. **Modi's Jurisprudence** indicates that rigormortis sets in within one or two hours of death and the duration could continue for about 19 hours, the average being 12 hours. This would take the time of death to around 4 am on 23.5.2002. There is no explanation as to why the accused would continue to remain in the house after killing the victim for so many hours till he boarded the bus in the morning. The Doctor who has been examined has not elaborated on the time of death at all. Nor has he opined as to the approximate time of death. Further PW5 has stated in his evidence that he heard his parents quarrelling at 9 pm. He left the house at 10 pm. when he could still hear their voices. Therefore, it is unbelievable that the victim had been done away with by the accused. There is also no explanation as to why the accused would leave the rope near the victim

when he had sufficient opportunity to dispose it off.

13. In such circumstances, in our opinion, it is not possible to hold that the chain of circumstantial evidence is complete and that it points to the sole hypothesis namely that the accused is guilty of having committed the offence. The evidence of the prosecution consists of several material contradictions and discrepancies.

14. In the result, we find that the prosecution has not proved beyond reasonable doubt that the accused is guilty. Appeal allowed. The accused be set free, if not otherwise required in law.